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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/083,050      | 02/26/2002  | Stephen Worth Hendrix | 8439M               | 3129             |

27752 7590 03/28/2005

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|                   |              |
|-------------------|--------------|
| EXAMINER          |              |
| SALVATORE, LYNDIA |              |
| ART UNIT          | PAPER NUMBER |
| 1771              |              |

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/083,050 | <b>Applicant(s)</b><br>HENDRIX ET AL. |  |
|                              | <b>Examiner</b><br>Lynda M Salvatore | <b>Art Unit</b><br>1771               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's remarks filed 01/06/05 have been fully considered and entered. Claims 16 and 17 have been withdrawn due to a restriction. Applicant invokes 35 U.S.C. 103(c) with respect to the reference of Brennan et al., US 6,361,784. Accordingly, the obviousness rejections set forth in section 5 of the last Office Action are hereby withdrawn. Applicant submits that Brennan et al., and the present application were subject to common ownership at the time of the present invention. As such, Brennan et al., no longer qualifies as prior art under 35 U.S.C 103 (a). Thus, a rejection over Brennan et al., would be improper. Applicant's arguments are not persuasive of patentability for reasons set forth herein below.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4, 6-9, 11 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bissett et al., US 5,821,237 in view of Varona, US 4,309,469.

Applicant argues a lack of motivation to combine the references of Bissett et al., in view of Varona on the grounds that there is no suggestion or teaching to treat the air laid non-woven fabric provided by Varona with the composition provided by Bissett et al. This argument is not found persuasive on the grounds that Varona was provided to evidence that forming air laid non-woven structures are known in the art and moreover, are employed to provide pre-moistened wet wipes. It is the position of the Examiner that since Bissett et al., only broadly teaches a non-woven substrate it is proper to look to the

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prior art to identify specific types of non-woven structures which may be utilized in the same capacity (e.g., as substrates for which can be further surface treated with a composition). As such, since Varona teaches an air laid non-woven substrate for a pre-moistened wet wipe there is no rational reason to believe that the skin improving composition provided by Bissett et al., could not be applied to an air laid non-woven substrate. Applicant has not provided any evidence that treating the surface of an air laid non-woven substrate with the claimed composition provides unexpected or superior results. Absent such evidence, it is the position of the Examiner that the invention lies with the composition and the specific type of non-woven structure (e.g., wet or air laid and/or hydroentangled) is not critical to practice the instant invention. Since, Applicant has not traversed the teachings of Bissett et al., to the claimed composition, the Examiner concludes that the composition of the instant invention is the same or similar to that of Bissett et al.

4. Claims 5 and 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bissett et al., US 5,821,237 in view of Varona, US 4,309,469 as applied to claim 1 above, and further in view of Luu et al., US 5,871,763.

A typo mistake on the part of the Examiner was noticed with respect to the above rejection. Claim 5, rather than claim 4, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bissett et al., US 5,821,237 in view of Varona, US 4,309,469 as applied to claim 1 above, and further in view of Luu et al., US 5,871,763. Claim 4 was rejected above. Section 4 of the last Office Action and Applicant's remarks address the limitations set forth in claims 5 and 10. Thus, the Examiner will address Applicant's arguments as if they were addressed to claims 5 and 10.

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Applicant maintains a lack a motivation to combine references and further argues that the lotion composition taught by Luu et al., is different from the claimed lotion composition. These arguments are not found persuasive. The Examiner maintains the combination rejection above. With respect to the argument regarding the difference in lotion composition, it is the position of the Examiner that Luu et al., was relied upon to evidence the addition of the specifically claimed non-ionic surfactant surfactants to lotion compositions. Therefore, the Examiner maintains that sufficient motivation exists to employ the specific non-ionic surfactant taught by Luu et al.

With respect to claim 10, Applicant argues that since the lotion of Luu et al., is different from the claimed lotion, the amount of lotion loaded on the substrate would not be the same. This argument is not found persuasive. The Examiner maintains the combination rejection above and the teaching by Luu et al., to apply an amount of lotion ranging from .1-25% by weight. Again, Luu et al., was relied upon to evidence that loading the claimed amount of lotion on the substrate is known in the art.

5. Claims 13-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bissett et al., US 5,821,237 in view of Varona, US 4,309,469 as applied to claim 1 above, and further in view of Dailey, III., US 4,863,064.

The combination of prior art fails to teach the container limitations set forth, however, the patent issued to Dailey, III teaches dispensing pre-moistened wet wipes from a "pop up" dispensing container (Abstract and Column 2, 55-65). With regard to claim 15, the Dailey, III does not specifically teach providing a set of instructions but it is the position of the Examiner that providing a set instructions with or on the container itself would be obvious to one having ordinary skill in the art. With regard to claims 19

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and 20, Dailey, III does not specifically teach the claimed Z or S-shaped aperture opening for dispensing the pre-moistened wet wipe however it is the position of the Examiner that said limitations are not germane to the final product combination of a pre-moistened wet wipe and container. Since the prior art meets the chemical and structural limitations of providing a pre-moistened wet wipe in a container the burden is shifted to Applicant to evidence that having a Z or S-shaped aperture opening is a critical feature to the container apparatus. Moreover, it would be obvious to one having ordinary skill in the art to provide a "pop up" dispensing container with a suitable opening for proper dispensing.

Therefore, motivated to provide a convenient way to employ pre-moistened wet wipes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to package the wet wipes taught by the combination of Bissett et al., in view of Varona, in the "pop up" dispensing container taught by Dailey, III.

### *Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1482. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 15, 2005

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